

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-KC-764
)	
Mediacom)	NAL/Acct. No.200332560002
)	
Owner of Cable Television System Serving)	FRN 0007-7421-41
Jefferson City, Missouri)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: November 5, 2002

By the Enforcement Bureau, Kansas City Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Mediacom, operator of the cable television system serving Jefferson City, Missouri, apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000) for willful and repeated violation of Section 11.35 of the Commission's Rules (“Rules”).¹ Specifically, we find Mediacom apparently liable for failure to maintain operational Emergency Alert System (“EAS”) equipment.

II. BACKGROUND

2. On September 12, 2002, an agent of the Commission’s Kansas City Office, accompanied by Mr. Gilbert of Mediacom, inspected the EAS installation for Mediacom’s cable television system serving Jefferson City, Missouri. The EAS equipment was set to automatically receive, re-transmit and log EAS tests. The most recent log entry for EAS data was dated January, 2002. Mr. Gilbert had no explanation regarding the equipment’s failure to conduct and log tests.

III. DISCUSSION

3. Section 11.35 of the Rules states cable systems are responsible for ensuring that EAS encoders, EAS decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the systems are in operation. Cable systems must also determine the cause of any failure to receive the required tests or activations and make appropriate entries in the cable system record. Section 76.1711 requires every cable system to keep a record of each test and activation of the Emergency Alert System (EAS) pursuant to the requirement of 47 C.F.R. Part 11 and the EAS Operating Handbook.² Inspection on September 12, 2002, of Mediacom’s EAS equipment and system records showed that no required EAS

¹ 47 C.F.R. § 11.35.

² 47 C.F.R. § 76.1711.

tests had been conducted or logged since January, 2002. In addition, the records contained no entries explaining why the tests were not conducted or that the EAS equipment had been taken out of service for repair.

4. Based on the evidence before us, we find Mediacom willfully³ and repeatedly⁴ violated Section 11.35 of the Rules by failing to maintain operational EAS equipment from January, 2002 until September 12, 2002.

5. Pursuant to Section 1.80(b)(4) of the Rules,⁵ the base forfeiture amount for EAS equipment not installed or operational is \$8,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Considering the entire record and applying the factors listed above, this case warrants an \$8,000 forfeiture.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ Mediacom is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8,000) for willful and repeated violation of Section 11.35 of the Rules by failing to maintain operational EAS equipment.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Mediacom SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch,

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁴ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁵ 47 C.F.R. § 1.80(b)(4).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

12. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Mediacom, 1922 Southridge Dr., Jefferson City, MO 65109.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. McKinney

⁹ See 47 C.F.R. § 1.1914.

District Director
Kansas City Office
Enforcement Bureau

Attachment